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ORIGIN EB-03

INFO OCT-01 ISO-00 /004 R

666

DRAFTED BY EB/OA/AVP:SCKEITER:JO

APPROVED BY EB/OA/AVP:AJWHITE

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R 112012Z NOV 75

FM SECSTATE WASHDC

INFO AMEMBASSY WELLINGTON 0000

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FOL REPEAT STUTE 261036 SENT ACTION LONDON DUBLIN

INFO RIO DE JANEIRO BONN BERLIN NOV 04

QTE

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E.O. 11652: N/A

TAGS: # EAIR, US, GW

SUBJECT: CIVAIR - INTERPRETATION OF BILATERAL IN
RELATION TO COMMISSION RATES; CHARTER PRICE SURVEILLANCE;
BERLIN/LONDON ITCS

REF: (A) LONDON 15075; (B) BONN 17859 AND
PREVIOUS (C) STATE 258732

DUBLIN FOR COLWELL, CIVAIR DEL
RIO FOR STYLES, CIVAIR DEL

SUMMARY--BACKGROUND AND GUIDANCE IN CONNECTION WITH
U.S.-U.K. BILATERAL CIVAIR CONSULTATION FOLLOW BELOW.

PARA 1 CONSIDERS THE COMMISSION SALE ISSUE AND SUGGESTS
ACCEPTING FORMAL BRITISH REQUEST FOR ARBITRATION

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IF MADE. PARA 2 PROVIDES A SUMMARY OF CURRENT CAB

PROCEDURES CONCERNING INTERNATIONAL CHARTER RATE FILINGS WHICH MAY BE HELPFUL IN DISCUSSIONS WITH BRITISH ON "PRICE SURVEILLANCE". PARA 3 LISTS PENDING UK CARRIER APPLICATIONS FOR 402 PERMITS. PARA 4 REITERATES PREVIOUS INSTRUCTION THAT SINCE BERLIN AVIATION CLEARLY TRANSCENDS U.S.-U.K. BILATERAL AVIATION RELATIONS, AND SINCE BONN FORAAN APPROPRIATE VENUE FOR BERLIN AVIATION DISCUSSIONS, U.S. CIVAIR DEL SHOULD MAKE CLEAR TO BRITISH IT IS

THEREFORE UNABLE DISCUSS IGS FARES OR BERLIN/LONDON ITC'S. END SUMMARY.

1. COMMISSION RATES

(A) DURING RECENT STYLES-ROGERS CONVERSATION AT RECENT ECAC CHARTER NEGOTIATION, LATTER STATED UK WISHES VERY MUCH TO DISCUSS INTERPRETATION OF SECTION II OF BERMUDA AGREEMENT ANNEX DURING CONSULTATIONS NEXT WEEK. WHEN STYLES RESPONDED THAT U.S. VIEW IS FIRM THAT COMMISSION RATES ARE NOT INCLUDED IN TERM "RATES" AS USED IN THAT SECTION, ROGERS PROPOSED ARBITRATION.

(B) ROGERS MAY VERY WELL NOT BE ABLE TO PERSUADE FCO TO GO TO ARBITRATION. IF MATTER IS RAISED INFORMALLY, YOU SHOULD RESPOND THAT IF BRITISH MAKE FORMAL, PRESUMABLY WRITTEN, REQUEST FOR ARBITRATION, WE WILL OF COURSE AGREE IN COMPLIANCE WITH THE TERMS OF THE BILATERAL. (FYI: WE SEE NO REASON TO PUSH FOR EARLY ARBITRATION OURSELVES. WITH THREAT OF HARSH BRITISH ACTION LIFTED, PAN AM CAN LIVE WITH CURRENT SITUATION WHILE AWAITING DEVELOPMENTS IN IATA AND BRITISH COURTS. END FYI.)

(C) WE WOULD GO TO ARBITRATION RATHER THAN ACCEPT BRPTISH POSITION. WE FEEL THERE CAN BE NO DOUBT THAT SECTION II REFERS THROUGHOUT TO THE SAME "RATES", WHETHER DESCRIBED AS "RATES CHARGED" IN (A), "RATES FOR THE TRANSPORT OF PERSONS AND PROPERTY BY AIR ON INTERNATIONAL SERVICES" IN (J), OR IN OTHER WORDS, AND THAT COMMISSION RATES ARE QUITE ANOTHER ANIMAL, TO BE INCLUDED AMONG COSTS RATHER THAN REVENUES.

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(D) IF YOU FEEL THAT IT MAY PERSUADE BRITISH THEIR CASE IS SO WEAK IT SHOULD NOT BE PURSUED, YOU SHOULD POINT OUT THAT CURRENT STANDARD LANGUAGE OF U.S. BILATERALS WHICH REFER TO "SALES COMMISSIONS" CLEARLY RELATES TO SITUATION WHERE COMMISSION IS CAMOUFLAGE FOR REBATE OR DISCOUNT TO PASSENGERS. LANGUAGE HAS NOTHING TO DO WITH LEVEL OF COMMISSIONS ON FARES AS FILED. NOTE THAT

SALES COMMISSIONS ARE NOT REPEAT NOT REFERRED TO AS "RATES".

(E) ADDRESSEES' COMMENTS WELCOME.

2. INTERNATIONAL TARIFF FILING/PRICE SURVEILLANCE--THE FOLLOWING SUMMARY OF CAB PROCEDURES FOR INTERNATIONAL CHARTER TARIFF FILING AND COMPLAINT MIGHT BE HELPFUL IN ANY U.S.-BRITISH DISCUSSION OF CHARTER RATE "SURVEILLANCE".

(A) CAB REGULATIONS REQUIRE THAT INTERNATIONAL TARIFFS BE FILED WITH THE TARIFF SECTION OF BE 30 DAYS IN ADVANCE OF THE EFFECTIVE DATE.

(B) IF THERE IS NO ADVERSE BOARD ACTION WITHIN 30 DAYS, THE TARIFF TAKES EFFECT. (THE 30 DAYS INCLUDE 10 DAYS FOR PRESIDENTIAL REVIEW.)

(C) ANY PERSON OR AGENCY OR GOVERNMENT MAY FILE COMPLAINTS ABOUT TARIFFS. REGARDING INTERNATIONAL TARIFFS, THE COMPLAINTS MUST BE FILED WITHIN 25 DAYS OF THE EFFECTIVE DATE.

(D) THERE IS PROVISION FOR INTERIM SUSPENSION. UPON RECEIPT OF A COMPLAINT, OR AT ITS OWN INITIATIVE, THE BOARD MAY ORDER AN INVESTIGATION AND SUSPENSION OF THE TARIFF FOR UP TO ONE YEAR.

(E) WITHIN THE ONE YEAR PERIOD THE BOARD MAY HOLD HEARINGS AND REJECT THE TARIFFS.

(F) IF THERE IS NO BOARD ACTION REJECTING THE TARIFF WITHIN THE ONE YEAR PERIOD, THE TARIFF BECOMES EFFECTIVE. LIMITED OFFICIAL USE

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NOTES: (1) CAB/BE INDICATES THAT SINCE 1972 WHEN THE BOARD RECEIVED AUTHORITY TO REJECT INTERNATIONAL RATES, THERE HAVE BEEN FEW IF ANY INVESTIGATIONS OF INTERNATIONAL CHARTER TARIFF FILINGS AND, SIMILARLY, FEW IF ANY REJECTIONS OF INTERNATIONAL CHARTER TARIFF FILINGS. (2) AN INITIAL REVIEW OF BOARD PROCEDURES SUGGESTS NO DIFFICULTY FOR THE BOARD TO "MONITOR" OTC TARIFF FILINGS MONTHLY.

3. UK APPLICATIONS FOR FOREIGN AIR CARRIER PERMITS.

(A) APPLICATIONS PENDING AS OF 10/31/75:

BRITISH AIRTOURS DKT. 28086 CHARTER ONLY

DAN-AIR DKT. 28087 CHARTER ONLY
JETSAVE LTD. DKT. 28339 INDIRECT
LAKER AIRWAYS DKTS. 25427/25457
LAKER AIRWAYS DKT. 27176 CHARTER RENEWAL ONLY
LAKER AIR TRAVEL
LTD. . DKT. 28379 INDIRECT

(MEMO TO THE CHIEF LAW JUDGE REGARDING LAKER AIR TRAVEL LTD. WAS SENT OCT 31, THUS BEGINNING CAB PROCEDURAL ACTION ON THE APPLICATION. BECKMAN APPLIED SOME PRESSURE ON CAB THROUGH THE BRITISH EMBASSY.)

(B) WE HOPE ABOVE INFORMATION WILL ALSO BE USEFUL IN U.S.-U.K. NEGOTIATIONS. GIVEN HISTORY OF "PROCEDURAL" DELAY AND ATTENDANT DIFFICULTIES IN CONNECTION WITH THE LAKER PERMIT, WE OBVIOUSLY DO NOT WISH TO RUB SALT IN WOUNDS BY EXPLICITLY LINKING OUTCOME OF CAB ACTION ON THESE PERMITS WITH OUTCOME OF CHARTER TALKS. IT MAY BE USEFUL, HOWEVER, AT SOME APPROPRIATE POINT FOR BRITISH TO REALIZE THAT IT MAY BE IN THEIR INTERESTS TO COOPERATE WITH US. WE WILL LEAVE THIS TO USDEL'S DISCRETION.

4. BERLIN AVIATION--REF (B) ARRIVED AFTER TRANSMITTAL REF (C). DESPITE DOT TACTIC OF FORCING DISCUSSION OF PAA ITC'S BY HOLDING LATE NOVEMBER FLIGHTS HOSTAGE, WE REMAIN HOPEFUL THAT APPROACHES HERE AND IN LONDON ON LIMITED OFFICIAL USE

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POLITICAL LEVEL WILL BE EFFECTIVE AND THAT FCO WILL AGAIN BE DISPOSED TO PREVENT DOT FROM RESTRICTING OR ELIMINATING PAA BERLIN CHARTERS. IN MEANTIME, U.S. CIVAIR DEL SHOULD AVOID LEGITIMIZING DOT POSITION THAT BERLIN AVIATION ISSUES ARE LINKED WITH U.S.-U.K. BILATERAL AVIATION RELATIONS. USDEL SHOULD THEREFORE CONFINE ITSELF TO REF (C), PARA 2, A), B), AND C) POINTS. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CIVIL AVIATION, INSTRUCTIONS, INCENTIVE WAGE SYSTEMS, AVIATION AGREEMENTS, NEGOTIATIONS, SUPPLEMENTAL AIRLINES, AIR FARES
Control Number: n/a
Copy: SINGLE
Draft Date: 11 NOV 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GarlanWA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE261036
Document Source: CORE
Document Unique ID: 00
Drafter: SCKEITER:JO
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750383-0066
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751179/aaaactco.tel
Line Count: 212
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 LONDON 15075, 75 BONN 17859
Review Action: RELEASED, APPROVED
Review Authority: GarlanWA
Review Comment: n/a
Review Content Flags:
Review Date: 02 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <02 JUN 2003 by ShawDG>; APPROVED <10 JUL 2003 by GarlanWA>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CIVAIR - INTERPRETATION OF BILATERAL IN RELATION TO COMMISSION RATES; CHARTER PRICE SURVEILLANCE;
TAGS: EAIR, US, GE, UK, PANAM
To: LONDON DUBLIN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006